FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 566/2006
(Smt. Vimal wd/o Khushalrao Wankhede & ors. Vs. Kisanrao Amrutrao Thakare)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. J.J. Chandurkar, Adv. for the appellanlts.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 17th September, 2007.

Heard Shri Chandurkar for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for a declaration that the lane on the eastern side of his house, belonged to him and he was the owner of the same. According to the plaintiff, the defendant had constructed a door on the western side of the lane and had started using the lane for ingress and egress. Since the lane belonged to the plaintiff, the plaintiff sought a declaration and also a permanent injunction restraining the defendant from using the suit lane.

The defendant denied the claim of the plaintiff. He denied that the lane belonged to the plaintiff. The defendant further pleaded that the lane belonged to the Government and the plaintiff's suit for grant of permanent injunction was not maintainable.

On the aforesaid pleadings of the parties, the trial Court framed the issues. The trial Court held that the plaintiff had failed to prove his ownership over the

suit lane. The Court then considered the evidence tendered by the defendant to hold that the suit lane belonged to the Government. In view of the two aforesaid findings, the Court dismissed the suit filed by the plaintiff for grant of declaration and permanent injunction. An appeal filed by the plaintiff against the judgment and decree passed by the trial Court was also dismissed.

It is submitted on behalf of the appellant that the first appellate Court erred in discarding a document at exh.33, a communication issued by the Gram Panchayat to the defendant, on the ground that the document did not bear the outward number. It was submitted on behalf of the appellant that the document at exh.33, in fact, discloses the outward number and, therefore, the rejection of a material piece of evidence vitiated the findings recorded by the first appellate Court. According to the counsel for the appellant, the appellate Court further committed a serious error in not considering the document which was produced by the appellant on record and which disclosed that the suit lane belonged to the plaintiff. It is submitted on behalf of the appellant that an application under Order XLI Rule 27 of the Code of Civil Procedure was filed by the plaintiff/appellant before the first appellate Court and the Court permitted the appellant to produce the document on record. But, however, the question as to whether the document could be considered in evidence was deferred till the date of hearing of the appeal. According to the counsel for the appellant, this

document is not considered by the first appellate Court while deciding the first appeal and, therefore, the judgment passed by the first appellate Court suffers from a serious infirmity.

The submissions made on behalf of the appellant are liable to be rejected. I have perused the document which was produced by the appellant in the first appellate Court in pursuance of the order passed by the first appellate Court on 18/3/2006 on the application filed by the appellant under the provisions of Order XLI, Rule 27 of the Code of Civil Procedure. I have perused the contents of this document which was produced on record, in its entirety. However, there is nothing in this document to suggest that the plaintiff is the owner of the suit lane and the lane forms a part of the house which is owned and possessed by the plaintiff. Hence, non-consideration of this document which was produced before the first appellate Court, does not vitiate the findings recorded by the first appellate Court on the question of the ownership of the plaintiff over the suit property.

Similarly, though the first appellate Court may have wrongly discarded the document at Exh.33, it would not be a reason which would give rise to a substantial question of law in this second appeal as the document at exh.33 also does not throw any light on the issue of ownership of the plaintiff over the suit property. It prima facie appears that the Gram Panchayat had written the aforesaid communication to the defendant on the basis of a complaint made by the

plaintiff to the Gram Panchayat. Since the issue of ownership of the plaintiff was, in fact, the main issue before the trial Court, the plaintiff could have proved his ownership over the property by placing cogent and reliable evidence in the form of oral and documentary evidence. The appellant has, however, failed to prove his ownership over the suit property. The findings recorded by both the Court on the question of ownership of the plaintiff are pure findings of fact which are based on a proper appreciation of the material evidence on the record.

For the reasons aforesaid, second appeal is dismissed with no order as to costs.

JUDGE

RMP